



THE COMMONWEALTH OF MASSACHUSETTS

William Francis Galvin
Secretary of the Commonwealth

Regulation Filing *To be completed by filing agency*

CHAPTER NUMBER: 314 CMR 19.00

CHAPTER TITLE: Oil Spill Prevention and Response

AGENCY: Department of Environmental Protection (DEP)

SUMMARY OF REGULATION: *State the general requirements and purposes of this regulation.*

314 CMR 19.00 implements a requirement of St. 2004, c.251, as amended by St. 2004, c.457, s.1 (the "Oil Spill Act") that provides, effective January 1, 2005, no tank vessel that is carrying 6,000 or more barrels of oil and is not self-propelled shall enter or transit designated areas of special interest within waters of the Commonwealth, unless such vessel is accompanied by a tugboat escort. This regulation also authorizes DEP to allow a regulated tank vessel to enter or transit an area of special interest without a tugboat escort, or accompanied by a tugboat that does not meet the statutory and regulatory definition of a tugboat escort, or require a tank vessel to share a tugboat escort with another vessel that is transiting the same area of special interest at the same time, where DEP determines that such transit is warranted due to exigent circumstances.

REGULATORY AUTHORITY: St. 2004, c.251, as amended by St. 2004, c.457, s.1; M.G.L. c. 21M, ss.1 and 6

AGENCY CONTACT: Richard Lehan, DEP Office of General Counsel PHONE: (617) 556-1007

ADDRESS: One Winter Street, Boston, MA 02108

Compliance with M.G.L. c. 30A

EMERGENCY ADOPTION - *If this regulation is adopted as an emergency, state the nature of the emergency.*

N/A.

PRIOR NOTIFICATION AND/OR APPROVAL - *If prior notification to and/or approval of the Governor, Legislature or others was required, list each notification, and/or approval and date, including notice to the Local Government Advisory Commission.*

Written notice was provided to the following parties on January 13, 2005: (1) Local Government Advisory Committee; (2) Department of Telecommunications and Energy; (3) Energy Facilities Siting Board; (4) Water Resources Commission; (5) Department of Housing and Community Development; (6) MA Historical Commission; (7) Executive Office of Environmental Affairs ("EOEA"), and (8) EOEA - MEPA Unit.

PUBLIC REVIEW - *M.G.L. c. 30A, §§ 2 and/or 3 requires notice of the hearing or comment period be filed with the Secretary of the Commonwealth, published in appropriate newspapers, and sent to persons to whom specific notice must be given at least 21 days prior to such hearing or comment period.*

Date of public hearing or comment period: Public Hearing (2/24/05); Public Comment Period (3/3/05).

FISCAL EFFECT - *Estimate the fiscal effect of the public and private sectors.*

For the first and second year: 314 CMR 19.00 implements a mandatory requirement of state law, with a relative moderate cost impact on the private tugboat and barge industry.

For the first five years: Same as above

No fiscal effect: N/A.

SMALL BUSINESS IMPACT - *State the impact of this regulation on small business. Include a description of reporting, record keeping and other compliance requirements as well as the appropriateness of performance versus design standards and whether this regulation duplicates or conflicts with any other regulation. If the purpose of this regulation is to set rates for the state, this section does not apply.*

DEP believes that the majority of regulated vessels are not small businesses. Certain tugboat owners that are or may seek to serve as tugboat escorts may be small businesses. For such businesses, the regulation should expand their potential business and may have a positive impact.

CODE OF MASSACHUSETTS REGULATIONS INDEX - *List key subjects that are relevant to this regulation:*

Oil Spill Prevention and Response;

Tug Escort Requirement applicable to certain MA Waters.

PROMULGATION - *State the action taken by this regulation and its effect on existing provisions of the Code of Massachusetts Regulations (CMR) to repeal, replace or amend. List by CMR number:*

314 CMR 19.00 was originally promulgated as an emergency regulation on December 30, 2004. Following public hearing and public comment, DEP is adopting 314 CMR 19.00 on a permanent basis.

ATTESTATION - *The regulation described herein and attached hereto is a true copy of the regulation adopted by this agency. ATTEST:*

SIGNATURE: 

DATE: March 11, 2005

Publication - *To be completed by the Regulations Division*

MASSACHUSETTS REGISTER NUMBER: #1022

DATE: 3/25/05

EFFECTIVE DATE: 3/25/05

CODE OF MASSACHUSETTS REGULATIONS

Remove these pages:

Insert these pages:

3, 4

3, 4
281 - 284

A TRUE COPY ATTEST



WILLIAM FRANCIS GALVIN
SECRETARY OF THE COMMONWEALTH

DATE 3/11/05 CLERK MRS

Table of Contents

	<u>Page</u>
314 CMR 8.00: SUPPLEMENTAL REQUIREMENTS FOR HAZARDOUS WASTE MANAGEMENT FACILITIES	227
Section 8.01: Purpose and Authority	227
Section 8.02: Definitions	227
Section 8.03: RCRA Facilities Subject to 314 CMR 8.00	230
Section 8.04: Additional Standards and Requirements for RCRA Facilities	231
Section 8.05: Standards for Wastewater Treatment Units Permitted under 314 CMR 3.00	232
Section 8.07: Standards for all other RCRA Facilities	232
Section 8.08: Supplemental Application and Permit Requirements	233
Section 8.09: Interim Status Standards for RCRA Facilities	233
Section 8.20: Supplemental Application Form HW	234
314 CMR 9.00: 401 WATER QUALITY CERTIFICATION FOR DISCHARGE OF DREDGED OR FILL MATERIAL, DREDGING, AND DREDGED MATERIAL DISPOSAL IN WATERS OF THE UNITED STATES WITHIN THE COMMONWEALTH	237
Section 9.01: Authority, Jurisdiction, and Purpose	237
Section 9.02: Definitions	237
Section 9.03: Activities Not Requiring an Application	240
Section 9.04: Activities Requiring an Application	241
Section 9.05: Submission of an Application	242
Section 9.06: Criteria for Evaluation of Applications for Discharge of Dredged or Fill Material	243
Section 9.07: Criteria for Evaluation of Applications for Dredging and Dredged Material Disposal	245
Section 9.08: Variance	248
Section 9.09: 401 Water Quality Certification	248
Section 9.10: Appeals	249
Section 9.11: Enforcement	249
Section 9.12: Authorization of Emergency Action	250
Section 9.13: Effective Date, Transition Rule, and Severability	250
(314 CMR 10.00 Through 11.00: RESERVED)	251
314 CMR 12.00: OPERATION AND MAINTENANCE AND PRETREATMENT STANDARDS FOR WASTEWATER TREATMENT WORKS AND INDIRECT DISCHARGERS	253
Section 12.01: Purpose	253
Section 12.02: Definitions	253
Section 12.03: Operation of Treatment Works	256
Section 12.04: Maintenance of Treatment Works	257
Section 12.05: Safety Program	258
Section 12.06: Sampling and Analysis	259
Section 12.07: Recordkeeping and Reporting	260
Section 12.08: Prohibitions and Standards for Discharge to POTWs	261
Section 12.09: POTW Pretreatment Programs	262
Section 12.10: Exemptions	262
(314 CMR 13.00 THROUGH 17.00: RESERVED)	265

Table of Contents

	<u>Page</u>
314 CMR 18.00: INDUSTRIAL WASTEWATER HOLDING TANK AND CONTAINER CONSTRUCTION, OPERATION, AND RECORD KEEPING REQUIREMENTS	271
Section 18.01: Purpose	271
Section 18.02: Applicability	271
Section 18.03: Exemptions	271
Section 18.04: Definitions	272
Section 18.05: Partial and General Prohibitions for Industrial Wastewater Holding Tanks, Mobile Tanks and Containers	274
Section 18.06: Design and Operation Requirements for Containers	275
Section 18.07: Design and Operation Requirements for Above-ground Holding Tanks	275
Section 18.08: Design and Operation Requirements for In-ground Holding Tanks	276
Section 18.09: Record Keeping	277
Section 18.10: Certification	278
Section 18.11: Holding Tank Decommissioning Requirements	278
314 CMR 19.00: OIL SPILL PREVENTION AND RESPONSE	281
Section 19.01: Purpose and Authority	281
Section 19.02: Definitions	281
Section 19.03: Tugboat Escort Requirements	282

314 CMR 19.00: OIL SPILL PREVENTION AND RESPONSE

Section

19.01: Purpose and Authority

19.02: Definitions

19.03: Tugboat Escort Requirements

19.01: Purpose and Authority

(1) The purpose of 314 CMR 19.00, *Oil Spill Prevention and Response* is to regulate those provisions of St. 2004, c. 251, "An Act Relative to Oil Spill Prevention and Response in Buzzards Bay and Other Harbors and Bays of the Commonwealth" (the "Oil Spill Act"), that are the responsibility of the Department to administer and enforce. The Oil Spill Act established Massachusetts General Laws Chapter 21M and amended several other existing Massachusetts general laws. At the outset, 314 CMR 19.00 regulates the tugboat escort requirement in M.G.L. c. 21M, §§ 1 and 6. The purpose of 314 CMR 19.03: *Tug Escort Requirements* is to reduce the risk of oil spills from tank vessels transiting designated areas of special interest within Massachusetts waters by requiring tank vessels that are not self-propelled (primarily tank barges) and are carrying 6,000 or more barrels of oil to use a tugboat escort while transiting such areas.

(2) 314 CMR 19.00 is promulgated pursuant to the Department's authority in St. 2004, c. 251, as amended by St. 2004, c. 457, including M.G.L. c. 21M, §§ 1 and 6.

19.02 Definitions

Area of Special Interest – any water of the Commonwealth that is found by the Secretary of the Office of Environmental Affairs to contain one or more immobile obstacles to navigation, abut or include areas of critical environmental concern, are designated as an estuary of national significance, abut or include habitat for endangered species, abut or include public recreation areas, support shell fishing, fin fishing or tourist industries or abut or include sensitive public safety areas. Such waters shall include, but not be limited to, Buzzards Bay, Vineyard Sound and Mount Hope Bay.

Commissioner - the Commissioner of the Department.

Department - the Massachusetts Department of Environmental Protection.

Oil Spill Act – St. 2004, c.251, as amended by St. 2004, c. 457, which includes M.G.L. c. 21M.

Tank Barge – a tank vessel without a means of self-propulsion or a self-propelled tank vessel less than 40 meters, 130 feet, in overall length.

Tank Vessel – a ship that is constructed or adapted to carry, or that carries, oil or other petroleum product in bulk as cargo and that operates on the waters of the Commonwealth or transfers oil or other petroleum products in a port or place subject to the jurisdiction of the Commonwealth.

Tugboat Escort:

- (a) a tug with twin screws and a separate system for power to each screw, with an aggregate shaft horsepower equivalent to 4,000 horsepower or greater and a minimum bollard pull of 50 tons; or
- (b) (i) a tractor tug, having an aggregate horsepower equivalent to 4,000 horsepower or greater and a minimum bollard pull of 50 tons, which is propelled by blades or screws which may be manipulated or rotated to provide propulsive thrust to any part of a 360 degree arc relative to the keel or longitudinal axis of the tug. As of January 1, 2006, a tugboat escort shall be equipped with fire fighting equipment and, at a minimum, shall meet the requirements of the following American Bureau of Shipping ("ABS") classifications: Fire Fighting Vessel Class 1 and Maltese Cross A1 (Towing Vessel).

Waters of the Commonwealth - all waters within the jurisdiction of the Commonwealth, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, coastal waters, and ground waters.

19.03: Tugboat Escort Requirements(1) Tugboat Escort Requirement.

- (a) Effective January 1, 2005, no tank vessel carrying 6,000 or more barrels of oil shall enter or transit any area of special interest within waters of the Commonwealth unless such tank vessel is accompanied by a tugboat escort. This tugboat escort requirement does not apply to a self-propelled tank vessel. A tugboat escort shall meet the definition of that term in 314 CMR 19.02.
- (b) The Department may authorize a tank vessel carrying 6,000 or more barrels of oil to enter or transit an area of special interest without a tugboat escort, or, accompanied by a tugboat that does not meet the definition of a tugboat escort in 314 CMR 19.02, or, accompanied by a tugboat escort situated between and dedicated to assist the tank vessel and another tank vessel transiting an area of special interest at the same time, whenever the Department determines that:
 - 1. there are no tugboat escorts reasonably available to accompany the tank vessel in the relevant area of special interest; or
 - 2. the delay in waiting for an available tugboat escort has or may reasonably result in a significant disruption of energy services to the public; or
 - 3. the existence or threat of a public health, safety or environmental emergency or other exigent circumstances warrant the Department's exercise of its enforcement discretion.

As provided in the Oil Spill Act, the Department's authority under 314 CMR 19.03(1)(b) will terminate on July 1, 2006. The Department may establish policies, procedures, and case-specific conditions to implement its authority under 314 CMR 19.03(1)(b). Any Department authorization for a tank vessel to enter or transit an area of special interest without a tugboat escort, or, accompanied by a tugboat that does not meet the definition of a tugboat escort, or, accompanied by a tugboat escort situated between and dedicated to assist the tank vessel and another tank vessel transiting an area of special interest at the same time, will relieve the owner or operator of such tank vessel from its obligation under 314 CMR 19.03(1)(a), to the extent specified in the Department's authorization. Nothing in 314 CMR 19.03(1)(b) or in a case-specific Department authorization shall be construed to relieve or otherwise limit the liability of the owner or operator of a tank vessel for any release of oil, hazardous material, or hazardous waste that occurs while the tank vessel enters or transits an area of special interest pursuant to a Department authorization under 314 CMR 19.03(1)(b).

- (c) The owner or operator of any tug that is serving as a tug escort shall certify to the Department, on a form established by the Department for such purposes, that the tug meets the design specifications and equipment requirements in the definition of a tugboat escort in 314 CMR 19.02. The Department reserves the right to require the owner or operator of any tug that is serving as a tug escort to further demonstrate to the Department's satisfaction that the tug meets the design specifications in the definition of a tugboat escort in 314 CMR 19.02, including the required minimum bollard pull, and is equipped with fire fighting equipment and meets the required ABS classifications, effective January 1, 2006.
- (2) Minimum standards for Equipment on Tugboat Escorts. The following minimum standards for equipment apply to tugboat escorts:
- (a) As of January 1, 2006, a tugboat escort shall be equipped with fire fighting equipment and, at a minimum, shall meet the requirements of the following ABS classifications: Fire Fighting Vessel Class 1 and Maltese Cross A1 (Towing Vessel).
 - (b) All tugboat escorts shall be equipped with and maintain in good working order:
 - 1. primary and secondary VHF radios;
 - 2. fendering appropriate to absorb the impact inherent in hull-to-hull operations;
 - 3. power line handling equipment fore and aft to mechanically assist in the deployment and/or retrieval of tow lines;
 - 4. tow lines, whether provided by the tank vessel and/or the tugboat escort, shall be maintained in sufficient number, length, condition and strength to assure effective control of the intended vessel maneuver, based on weather conditions, the tank vessel size, and the tugboat escort's bollard pull, and have a strength of at least 1.5 times the tugboat escort's bollard pull; and
 - 5. sufficient braking force to stop a tank vessel that is not self-propelled.

- (3) Minimum Standards for Personnel on Tugboat Escorts. The following minimum standards for personnel apply to tugboat escorts:

- (a) Tugboat escort crew members shall be certified pursuant to applicable federal laws.
- (b) All tugboat escorts shall have sufficient and qualified line-handling capable crew members standing by and available to immediately receive lines from the tank vessel. The crew shall not be assigned duties that would interfere with their ability to immediately respond to an emergency situation.

(4) Pre-Escort Conference. Prior to commencing an escorted transit, the tugboat captain shall contact the tank vessel master to confirm the position of the tank vessel, establish the radio frequency to be used and the anticipated direction of movement and destination of the tank vessel, and exchange other pertinent information that the tugboat captain and the tank vessel master deem necessary to facilitate operations in the case of an unplanned event.

(5) Reporting. The owner or operator of a tugboat shall submit to the Department a report on its tugboat escort activities on a form established by the Department for such purposes. Reporting shall occur on a quarterly basis or on another frequency specified by the Department. The owner or operator of the tugboat shall provide a copy of such report to the relevant Massachusetts pilot commissioner at the same time. At a minimum, the report shall include the following information:

- (a) the identity of all tank vessels escorted by the tugboat and a description of the type and the number of barrels of oil carried by the tank vessel;
- (b) the date and the transit route of all tank vessels escorted by the tugboat; and
- (c) a description of any problems encountered during the escorted transit and the response of the tugboat captain and/or the tank vessel master to such problems.

(6) Authority of Commissioner to Contract with a Tugboat Escort Operator. The Commissioner may contract with one or more tugboat escort operators to assist in the implementation of the tugboat escort requirement in 314 CMR 19.03(1). If the Commissioner chooses to exercise this authority, any such contracting shall be the result of a competitive procurement that is conducted in consultation with the relevant Massachusetts pilot commissioner. Each tugboat escort operator contractor selected by the Commissioner shall meet the definition of a tugboat escort in 314 CMR 19.02, and meet or exceed the minimum standards for equipment and training of personnel on tugboat escorts in 314 CMR 19.03. Any contract with a tugboat escort operator shall provide for service at a regulated rate for a minimum of five (5) years.

REGULATORY AUTHORITY

314 CMR 19.00: M.G.L. c. 21M, §§ 1 and 6.

NON-TEXT PAGE